

REMARKS

This application has been carefully reviewed in view of the Office Action dated August 26, 2009. All rejections are respectfully traversed and reconsideration is respectfully requested.

INTERVIEW SUMMARY

On November 10, 2009, the undersigned spoke with Examiner Moorthy regarding the present rejections. The remarks below represent the Applicant's position on the unamended claims and are believed adequate to overcome the rejections. However, in the interest of advancing prosecution, the undersigned agreed to make the amendments presented above. In particular, the undersigned agreed to amend claim 1 to incorporate the features of claims 2-4. (It is noted that this renders claim 1 essentially the same as claim 8 – previously presented, hence, final rejection is inappropriate for claim 1 as amended since such amendment does not necessitate a new grounds of rejection).

Examiner Moorthy indicated that he would consider the arguments presented below and further consider the matter upon receipt of the present amendment. While no agreement was reached as to patentability, Examiner Moorthy did agree to the following:

1. If a subsequent Office Action is required, it will not be made final; and
2. If additional art or grounds for rejection are identified, the undersigned will be contacted by telephone by Examiner Moorthy to discuss possible amendments prior to issuance of a new rejection.

Applicant appreciates the courtesies extended by Examiner Moorthy in the above interview. Applicant reserves the right to present the unamended claims at a later time and makes no concession as to the correctness of any position of the Office presented in the present Office Action.

Regarding the Rejection Under 35 U.S.C. § 102

Claims 1, 5-7, 12 and 16-18 were rejected under 35 U.S.C. § 102 as anticipated by the Ramaswamy reference of record. Applicants respectfully traverse this rejection as follows:

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For the Patent Office to establish anticipation, MPEP § 2131 requires that the Patent Office must show where each and every element of the claims is shown in a single reference. Further, the elements must be arranged as required by the claims. The requirement that each and every element be disclosed in the manner claimed is a rigorous standard that the Patent Office has not met in this case.

Within the context of these rigid requirements for a valid rejection under 35 U.S.C. § 102(e), Applicants believe that the Patent Office may be either misinterpreting Applicants' claimed subject matter or misinterpreting the actual disclosure of the cited references.

Applicants reiterate the quotation presented in the prior response and notes that the term "point of deployment module" has been explicitly defined as being consistent with the definition of the OpenCable™ specification. This definition is in the patent application specification as originally filed at least at page 3, lines 23-27. Page 3, lines 23-27 reads as follows:

The OpenCable™ specification defines a Point of Deployment Module (POD or CableCARD) used in conjunction with a host television Set-Top Box or other television receiver as depicted in FIGURE 1. As shown, the CableCARD 10 is interfaced with the host device 14 (e.g., a television or television STB) at a CableCARD (or POD) interface. (emphasis added).

Regarding the rejection of independent claims 1, 5-7, 12 and 16-18, each of these unamended claims recites, for the respective method or device, among other things, a "point of deployment module", and explicitly defines actions carried out in such point of deployment module. Such point of deployment module may be in the form of a CableCARD used in conjunction with a host television Set-Top Box or other television receiver. (See Specification, page 3, lines 23-27). It is heretofore unknown to use such a point of deployment module (POD) for purposes of transcoding.

The Patent Office alleges that the Ramaswamy reference discloses Applicants' claimed point of deployment module and cites element 12 and paragraph [0013] in making the rejection. However, neither the drawings of paragraph [0013] discloses or suggests a point of deployment module. Moreover, a careful review of all claims rejected as anticipated by Ramaswamy call for either processes that are carried out within the point of deployment module and/or structure of

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such module. None of these claimed features are present in Ramaswamy. Moreover, the terms "POD" or "point of deployment" are not present in the text, and the undersigned finds nothing that can be reasonably deemed equivalent. The Office also asserts that page 5, and Applicants agree that "Ramaswamy does not teach decrypting the encrypted data. Ramaswamy does not teach encrypting the transcoded data stream". Since a POD module as defined is only known to be used for conditional access purposes, this admission bolsters Applicants' position that Ramaswamy is inadequate to anticipate the claims as alleged. Ramaswamy's total failure to address any encryption issues clearly means that there is no suggestion that a device (a POD module) is neither taught nor suggested as an appropriate host device for carrying out transcoding functions. Hence, there can be no anticipation and reconsideration is requested.

Specifically regarding claim 1, the claim language clearly and explicitly calls for the actions of "receiving", "transcoding" and "sending" (in any form) to all be carried out "at the point of deployment module". Applicants have examined the cited reference and finds no such teaching therein. Moreover, the specific acts claimed are not present in the cited reference. Hence, the claim is clearly not anticipated.

Specifically regarding claims 5 and 16, the Office points to paragraph [0034] as anticipating these claim teachings. However, it is noted that the claims call for the second coding to be MPEG compliant coding carried out at the point of deployment module, but paragraph [0034] only appears to note that content could be received and decoded by a media consumption device as MPEG compliant coding and can be transcoded, as understood by the undersigned. The claim language explicitly calls for the second coding (the output of the transcoding operation carried out in the POD) is MPEG compliant. The undersigned finds no teaching consistent with this claim language in paragraph [0034]. Hence, these claims are further unanticipated.

Specifically regarding claims 6 and 17, the Office asserts without support that the substance of these claims are provided in paragraph [0025]. The undersigned has examined this paragraph, as well as the entire document, and finds no such teaching or suggestion that a transcoding point of deployment module is OpenCable compliant as claimed. Moreover, the

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term "OpenCable" or any reasonable equivalent cannot be found by the undersigned in the document. Hence these claims are further unanticipated.

Specifically regarding claims 7 and 18, the Office asserts that these claim features are found in paragraphs [0032] and [0034]. However, it is noted that the claims call for the second coding to be MPEG-2 compliant coding carried out at a point of deployment module, but paragraphs [0032] and [0034] only appear to note that content could be received and decoded by a media consumption device as MPEG compliant coding and can be transcoded, as understood by the undersigned. The claim language indicates that the second coding (the output of the transcoding operation carried out in the POD) is MPEG-2 compliant. There is no teaching consistent with this claim language in paragraph [0034]. Hence, these claims are further unanticipated.

Specifically regarding claim 18, the Office asserts that the claim feature of a "transcoder forming a part of the point of deployment module" as claimed is met by paragraph [0035] which states that "[t]he transcoder 22 may be integrated with the set top box 18, disposed within the set top box 18, or separate from but in communication with the set top box 18". However, there is no teaching that the transcoder can be integrated within a point of deployment module as claimed. As noted above, the term is not even used in the entire specification.

Additionally, it is noted that the POD module incorporates, as claimed, means for receiving content for transcoding, a transcoder, and means for sending the transcoded data stream back to its host television receiver device. While Ramsawamy carries out transcoding, there is no such communication mechanisms provided for communication with a POD module as explicitly claimed.

It is finally noted that the use of the term "point of deployment" module in the claims carries with it the definition provided in the specification. Hence, inherent with such definition the transcoding operation is in addition to the functions normally carried out in a POD module. Accordingly, the claim features associated with the meaning of the term "point of deployment module" cannot be minimized or ignored in establishing *prima facie* unpatentability in the present application. The term, as used and clarified by definition in the specification, has a

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specific technical meaning to those skilled in the art that cannot be ignored in order to facilitate rejection. Reconsideration and allowance are respectfully requested at an early date.

Regarding the Rejection Under 35 U.S.C. § 103

Claims 2-4 and 13-15 were rejected as obvious in view of the combination of Ramaswamy and Apostolopoulos, both of record. The Office applies the Ramsawamy reference in the same manner as used above in connection with claims 1 and 12.

In order for the Patent Office to establish *prima facie* obviousness, MPEP 2143.03 requires that "all claim limitations must be considered" and further that each and every word of the claims must be considered. ("All words in a claim must be considered in judging the patentability of that claim against the prior art." (MPEP 2143.03 quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). It is further noted that "[t]o establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). This is a fundamental to an analysis under the factual inquiries required by *Graham v. John Deere*, 383 U.S. 1 (Supreme Court, 1966), as a part of identification of the scope and content of the prior art. The Patent Office has failed to do so in the present rejection. At least one element is missing from the combination of references and the Patent Office has failed to provide any articulated reasoning as to why one of ordinary skill in the art would find the claims as a whole to be obvious in the absence of the claim features not present in the prior art. (See *In re Kahn*, 441 F.3d 977, 988 (CAFC, 2006), as explicitly endorsed by the Supreme Court). Such an analysis is required in order to satisfy the factual inquiry ascertaining the differences between the prior art and the claims at issue. Accordingly, the Patent Office has failed to establish *prima facie* obviousness and the present rejection should be withdrawn.

The present rejection is based in part upon the Ramsawamy reference as used above in connection with claims 1 and 12. But, as clearly established above, the Ramsawamy reference falls short in that it fails to disclose, teach or suggest a POD module in any way, shape or form. The presence and operation of such POD module is integral to the claims and cannot be ignored and its absence has not been explained or accounted for in any way other than to erroneously

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assert that Ramsawamy contains the disclosure. Hence, the proposed combination fails by virtue of failing to identify each and every claim element as required.

The Office asserts that page 5 that "Ramaswamy does not teach decrypting the encrypted data. Ramaswamy does not teach encrypting the transcoded data stream". Applicants agree and further note that 1) this fact clearly indicates that Ramssaway does not contemplate use of POD module, and 2) neither of the cited references teaches or suggests use of a "POD", point of deployment module, or CableCard for both their decryption related functions (inherent with the definition of the term) as well as for transcoding. Not only is the rejection improper for failure to consider the claim feature of a "point of deployment module" but there is absolutely no rationale provided for incorporating the functionality of transcoding within such a module. The specification clearly teaches that incorporation of such functionality into a POD module can be used as a path to upgraded decoding capability.

The Office apparently asserts that one of ordinary skill in the art would have been motivated to encrypt and decrypt packet payloads in order to contend with potentially untrusted transcoder (e.g., page 5). However, no rationale is provided for why one would carry out the transcoding within a point of deployment module. Indeed there is no teaching in the cited art of use of the POD module at all. Clearly, the Office is deficient in establishing *prima facie* obviousness. Reconsideration and allowance are respectfully requested.

Claims 8-11 and 19-22 were also rejected based on the combination of Ramaswamy and Apostolopoulos. The Office uses the same rationale for rejection of these claims as was used previously for other claims, and errs for the same reasons pointed out above. The rejection of claim 8 is in error at least for the same reasons as related above for claims 1, 12, 6, 17 and 18. The rejection of claims 9 and 20 are in error for at least the same reasons as related above for claims 1, 5, 7, 12, 16 and 18. The rejection of claims 10 and 21 are in error for at least the same reasons as related above for claims 1, 6, 12 and 17. The rejection of claims 11 and 22 are in error for at least the same reasons as related above for claims 1, 7, 12 and 18. The rejection to claim 19 is in error for at least the reasons as noted above for claims 1 and 12. In each case, the errors noted include failure for the combination to disclose multiple claim features thereby resulting in a failure of the Office to establish *prima facie* obviousness of any claim based upon

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the combination.

The Office asserts that pages 6 and 8 that "Ramaswamy does not teach decrypting the encrypted data. Ramaswamy does not teach encrypting the transcoded data stream and sending the encrypted stream back to the host television receiver device". Applicants again agree and further reiterate the arguments made above. The same failures are present in the present rejection and the same arguments are applicable. Hence, reconsideration and allowance are respectfully requested.

Amendments

The above amendments are presented as a result of the telephone interview with Examiner Moorthy and are offered in an attempt to expedite prosecution of the present application. In accord with this amendment, certain claims have been cancelled and all claims now call for the POD module to receive encrypted content, decrypt the content, transcode the content, and re-encrypt the transcoded content (to paraphrase without intent of adding further limitations). Hence, all claims now clearly distinguish over the known art and allowance is respectfully requested.

Concluding Remarks

Applicants respectfully submit that claims 1-22 are in condition for allowance without amendment. The claims remaining after amendment are hence clearly allowable and notice of the same is requested at the earliest possible date. Applicants reserve the right to provide additional arguments against the rejection of these claims in the future if needed. In view of the above, reconsideration and allowance are respectfully requested. If any issues remain, the Examiner is encouraged to contact the undersigned to expedite allowance and issue and avoid the necessity and expense of appeal.

The undersigned additionally notes that many distinctions exist between the cited art and the claims. However, in view of the deficiencies discussed above, further discussion is believed to be unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

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No amendment made herein was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references.

Interview Request

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned respectfully requests the courtesy of an interview. The undersigned can be reached at the telephone number below.

Respectfully submitted,

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